IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.A.Nos.813 & 1257 OF 1999

1. The Assistant Commandant,
   Central Industrial Security Force,
   Madras Fertilizers Limited,
   Manali, Madras-600 068.

2. The Group Commandant,
   Central Industrial Security Force,
   Ministry of Home Affairs, Anna Nagar,
   Madras-600 102.

3. The Deputy Inspector General (SZ),
   Central Industrial Security Force,
   Ministry of Home Affairs, Anna Nagar East,
   Madras-600 102.

4. The Director General,
   Central Industrial Security Force,
   Block No.13, CGO's Complex,
   Lodi Road, New Delhi-110 003. ... Appellants 1 to 4 in WA.No.813/99 and Respondents 1 to 4 in W.A.No.1257 of 1999

Versus

Mr.V.Selvarajan ...Respondent in WA.No 813/99 and Appellant in W.A.No.1257 of 1999.[Petitioner]

For Appellants : Mr.K.Veeraraghavan,ACGSC
in WA.813/99 and
for Respondent in
WA.1257/99

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For Respondent : Mr.V.Prakash, Senior Counsel
in WA.813/99 and for M/s M.Ramkumar
for appellant in
WA.1257/99

Prayer: These Appeals are filed under Clause 15 of the Letters Patent against the order dated 07.04.1999 passed by the learned Single Judge of this Court in W.P.No.17379 of 1991.

COMMON JUDGMENT

(Judgment of this Court was delivered by P.D.DINAKARAN, J.)

These writ appeals are directed against the order of the learned Single Judge, dated 07.04.1999 made in W.P.No.17379 of 1991.

2. The delinquent Officer, one V.Selvarajan (hereinafter referred to 'writ petitioner') filed the Writ Petition in W.P.No.17379 of 1991, challenging his removal from service. The learned Single Judge, by order dated 07.04.1999, which is impugned in these writ appeals, directed reinstatement of the writ petitioner with continuity of service, but without back wages.

3. Challenging the above said order, writ appeal in W.A.No.813 of 1999 has been preferred by the department, viz., Central Industrial Security Force (hereinafter referred to 'respondent-department'), while the writ petitioner has preferred the Writ Appeal in W.A.No.1257 of 1999 claiming back wages.

4.1. The brief facts which led to the filing of the Writ Petition, are as follows:

The writ petitioner was working as a 'Naik' in Intelligence and Crime Section in the respondent-department. The Group Commandant of the respondent-department, by his order dated 20.09.1985, removed the writ petitioner from service with effect from 21-9-1985 for the following charge of misconduct,

> "On 07.09.1984, No.7218266 Naik V.Selvarajan of CISF Unit, MFL Manali while performing duty at Int/Crime Section allegedly prepared a fake

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challan and allowed to take out one Tonne of Casurina Ballies by Shri B.Mani Supervisor of M/s Ramakrishna Contract unauthorisedly."

4.2. Aggrieved against the order of removal, the writ petitioner preferred an appeal before the Appellate Authority, namely, the Deputy Inspector General. By order dated 2.6.1986, the Appellate Authority also confirmed the order of removal. Thereafter, the Writ Petitioner preferred a revision before the Revisional Authority, namely, Director General of the respondent-department. By order dated 6.8.1987, the Revisional Authority dismissed the revision, against which the above writ petition was filed.

4.3. The respondent-department resisted the writ petition on the ground that since the charge levelled against the writ petitioner, viz., he permitted one Shri B.Mani, Supervisor of M/s.Ramakrishna Contract to take out one tonne of Casurina Ballies by preparing a fake challan and thereby the respondent-department incurred loss, was held proved, no interference is required in the impugned disciplinary action. It was also contended on behalf of the respondent-department that the writ petitioner being a Naik in Crime and Intelligence Section in respondent-department is expected to act with due diligence, inasmuch as his nature of work demands vigilance with an inbuilt requirement to act carefully, and any carelessness and negligence in discharge of responsibilities would invite necessary action, which has been done by the respondent-department in a proper manner, and hence, no interference is required.

4.4. The learned Single Judge though did not interfere with the impugned disciplinary proceedings, directed the respondent-department to reinstate the writ petitioner without back wages, finding that the punishment of removal from service is disproportionate to the charge proved.

5. Both the learned counsel for the writ petitioner and the respondent-department reiterated their submissions that were made before the learned Single Judge.

6. We have given careful consideration to the submissions of both sides.

7. **It is well settled law that while exercising powers**

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conferred under Article 226 of the Constitution of India, it may not be proper for this Court to act as an appellate authority, as the jurisdiction of this Court in exercising the power of judicial review is meant to correct the errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice, inasmuch as the power of judicial review has to be confined with the decision making process and not with the decision itself. However, if and when the punishment imposed based on the findings of the Enquiry Officer shocks judicial conscience, it can be interfered, vide ***Lalit Popli v. Canara Bank, [2003] 3 SCC 583.***

8. In the instant case, it is not in dispute that the petitioner is working as a Naik in Crime and Intelligence Section in the respondent-department and therefore, he is expected to discharge his duties diligently with an inbuilt requirement to act carefully. The case of the writ petitioner is that he never prepared any fake challan, but he has only directed one Shri B.Mani to drive the cart through North Gate by making an endorsement as "N.Gate" on the backside of the challan, which was alleged to be fake. However, the fact remains that only because of the endorsement made by the writ petitioner on the back side of the challan, which he is not supposed to do, the cart with one tonne of Casurina ballies was permitted to be taken out unauthorisedly by the Supervisor, Shri B.Mani. Therefore, even though the delinquent pleads lack of 'criminal intent' in respect of the preparation of the fake challan, in our considered opinion, we are not able to subscribe ourselves to such contention as the plea of lack of criminal intent is immaterial while considering his duty and responsibility as a Naik in Crime and Intelligence Section in respondent-department as he had not acted with due vigilance and care. However, an order of removal on that ground in our considered opinion is excessive while assuming the charge against the writ petitioner, namely, that he has not discharged his duties with due diligence and care is proved. Therefore, only by striking a balance between the service rendered by the writ petitioner for the past 15 years and the nature of the charge, the learned single Judge has rightly set aside the order of removal and directed reinstatement of the writ petitioner with continuity of service, but without back wages. Therefore, considering the limited scope of judicial review, we are of the considered opinion that the learned single Judge was right in setting aside the order of removal and directing

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the reinstatement of the writ petitioner with continuity of service, but without back wages.

9. We are fortified in our conclusion by the decision of the Apex Court in ***United Commercial Bank v. P.C. Kakkar,(2003) 4 SCC 364***, wherein it is held that **the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. Therefore, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference.**

10. We, therefore, find no reason to differ from the conclusions of the learned single Judge in his order dated 7.4.1999.

In the result, both these appeals fail and they are accordingly dismissed. There shall be no order as to costs. The respondent-department shall pass appropriate orders in compliance with the order of the learned single Judge dated 7.4.1999 expeditiously, in any event, within a period of eight weeks from the date of receipt of a copy of this order.

01.12.2004

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To

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   Block No.13, CGO's Complex,
   Lodi Road, New Delhi-110 003.

Two cc to Mr.K.Veeraraghavan SCCG, SR.nos.52249 & 52251.

one cc to Mr.K.R.Ashok, Advocate SR.No.52521

one cc to M/s M.Ramkumar and G.Ramapriya Advocates
SR.No.52520.

W.A.NoS.813 & 1257 of 1999

MAB [co]
MK

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